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DENISE R. REED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DENISE R. REED,) Case No. 4:07-CV-03648-CW
Petitioner,)
vs.) MEMORANDUM OF POINTS AND
NATIONAL ASSOCIATION OF) AUTHORITIES IN SUPPORT OF
SECURITIES DEALERS, INC., WHITE) PETITIONER DENISE R. REED'S
PACIFIC SECURITIES, INC.) MOTION FOR AWARD OF
and ROY L. PANELLI,) ATTORNEYS' FEES
Respondents.)
Hearing Date: January 10, 2008
Hearing Time: 2:00 p.m.
Judge: Hon. Claudia Wilken
Petition Filed: July 16, 2007

Petitioner DENISE R. REED (“Reed”) hereby respectfully submits the following Memorandum of Points and Authorities in Support of her Motion for Award of Attorneys’ Fees (“Motion”):

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner DENISE R. REED (“Reed”) brings this Motion against Respondent White Pacific Securities, Inc. (“White Pacific”) to recover her attorneys’ fees, costs and expenses incurred in the enforcement of her rights as the prevailing party, including bringing her Petition and 1st Amended Petition (“Petition”) to Confirm the award (the “Award”) issued in her favor

1 by Respondent FINANCIAL INDUSTRY REGULATORY AUTHORITY (“FINRA”, f/k/a
 2 National Association of Securities Dealers or NASD) in the arbitration underlying Reed’s
 3 Petition.

4 This Motion is based on an Independent Contractor Agreement (the “Agreement”)
 5 between Reed and White Pacific, signed by Reed on December 14, 2000 and by White Pacific on
 6 May 14, 2001. A true and correct copy of the Agreement is marked and attached as Exhibit “A”
 7 to the concurrently filed Declaration of Jonah A. Toleno, Esq. (“Toleno Declaration” or “Toleno
 8 Dec.”). Pursuant to the Agreement and the Award, Reed is entitled to payment of her attorneys’
 9 fees, costs and expenses as set forth herein. A true and correct copy of the Award is marked and
 10 attached as Exhibit “B” to the concurrently filed Declaration of Jonah A. Toleno, Esq. (“Toleno
 11 Declaration” or “Toleno Dec.”).

12 Accordingly, Reed brings this Motion for an Award of her Attorneys’ Fees, Costs and
 13 Expenses incurred in enforcing her rights as the prevailing party in the underlying arbitration.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 Reed filed her initial Statement of Claim against Respondents WHITE PACIFIC
 16 SECURITIES, INC. (“White Pacific”) and ROY L. PANELLI (“Panelli”) with NASD in NASD
 17 Case No. 04-03449 on May 4, 2004, and her First Amended Statement of Claim on January 12,
 18 2007. (Toleno Dec., ¶2.) At all times relevant to Reed’s Statement of Claim, First Amended
 19 Statement of Claim, the underlying arbitration, and this action, there was and is in effect an
 20 Independent Contractor Agreement (the “Agreement”) between Reed and White Pacific, which
 21 provides that, “In the event any dispute among the parties should result in litigation or arbitration,
 22 the prevailing party in such a dispute shall be entitled to recover from the non-prevailing party all
 23 reasonable fees, costs, expenses of enforcing any right of the prevailing party, including, without
 24 limitation, reasonable attorneys’ fees and expenses.”. (Exh. A; Toleno Dec. ¶2.)

25 Reed alleged in her Statements of Claim that White Pacific and Panelli had inaccurately
 26 reported certain events on her Forms U-4 and U-5 filed with the Central Registration Depository
 27 (“CRD”). Reed sought expungement of these inaccurately reported events on her Forms U-4 and
 28 U-5, and alleged causes of action for defamation, breach of contract, breach of the implied

1 covenant of good faith and fair dealing, and negligence. (Toleno Dec., ¶3.)

2 The matter proceeded to hearing in San Francisco, California, on April 16-18, 2007.
 3 (Toleno Dec., ¶4.) The arbitration panelists (the “Panel”) made their decision shortly thereafter
 4 and the NASD served the Award on the parties on June 5, 2007. (Exh. B, Toleno Dec., ¶4.) The
 5 Panel held that White Pacific and Panelli had not accurately reported and maintained Reed’s
 6 CRD records, and thus granted Reed’s request for expungement of inaccuracies on her U-4, U-5
 7 and her CRD records. (Exh. B, Toleno Dec., ¶5.)

8 Of the seven occurrences on Reed’s U-4, U-5 and CRD records for which Reed sought
 9 amendment, the panel recommended (a) expungement of five of the occurrences (occurrences “a”
 10 - “e” as referenced on the Arbitration Award) on the basis that they were “clearly erroneous”, and
 11 (b) expungement of two of the occurrences (occurrences “f” and “g” as referenced on the
 12 Arbitration Award) on the basis that they were “defamatory”. (Exh. B, Toleno Dec., ¶6.) The
 13 Panel determined that Reed was the prevailing party and awarded Reed her reasonable attorneys’
 14 fees and costs incurred in bringing the arbitration matter. FINRA required Reed to confirm the
 15 Award before it would execute the expungement relief set forth in the Award. (Exh. B, Toleno
 16 Dec., ¶7.) In accordance with the Award, Reed filed her Petition to Confirm the Arbitration
 17 Award on July 16, 2007, and First Amended Petition on July 24, 2007. (Toleno Dec., ¶7.)

18 In the meantime, on July 6, 2007, White Pacific filed with FINRA a Motion to Modify
 19 Arbitration Award as to Attorneys’ Fees. In addition to formally opposing the motion, Reed’s
 20 counsel exchanged multiple correspondences with FINRA concerning White Pacific’s refusal to
 21 pay the attorneys’ fees awarded to Reed. The Panel ruled in Reed’s favor. (Toleno Dec. ¶8.)
 22 True and correct copies of White Pacific’s Motion to Modify Arbitration Award, Reed’s
 23 Opposition to same, and the Panel’s ruling are marked and attached collectively to the Toleno
 24 Declaration as Exhibit “C”. Pursuant to FINRA Arbitration Code Section 10330(h), White
 25 Pacific was required to pay the amounts directed by the Award within thirty (30) days of the date
 26 of the Award, or else pay interest at the legal rate on the Award amount. (Toleno Dec. ¶9.)

27 On August 1, 2007, White Pacific paid Reed the following amounts in connection with
 28 the arbitration: \$158,797.10 for her attorneys’ fees, \$5,228.70 for her costs and expenses, \$375

1 for filing fees. But it did not timely make its payment, so Reed was forced to incur attorneys' fees
 2 in enforcing the interest requirement of FINRA Arbitration Code Section 10330(h). White
 3 Pacific eventually paid Reed the interest due on the Award amount pursuant to Section 10330(h),
 4 but only after Reed's and White Pacific's counsel exchanged extensive correspondence on the
 5 matter. (Toleno Dec. ¶9.)

6 Since the issuance of the Award, Reed has incurred \$42,140.54 in attorneys' fees, costs
 7 and expenses in connection with the enforcement of her rights as the prevailing party. In addition
 8 to those fees incurred in the drafting, filing, and litigating her petition, Reed has incurred fees
 9 arising out of jurisdictional objections raised by White Pacific prior to filing its answer. Although
 10 White Pacific did not bring a formal motion asserting its jurisdiction objection, counsel for Reed
 11 was called upon to address White Pacific's pre-Answer objections by way of research and
 12 substantial correspondence with White Pacific's counsel. (Toleno Dec. ¶10.) A true and correct
 13 copy of a summary of Reed's attorneys' fees, costs and expenses is marked and attached to the
 14 Toleno Declaration as Exhibit "D".

15 The fees, costs and expenses sought in this Motion were incurred in the enforcement of
 16 Reed's rights as the prevailing party, including responding to White Pacific's Motion to Modify
 17 Award and jurisdictional objections; the preparation, filing and litigation of the Petition action;
 18 and litigating with FINRA to ultimately reach a joint stipulation for entry of judgment confirming
 19 sections 3B-3G of the Award and withdrawing Reed's request for confirmation of Section 3A of
 20 the Award (the "Judgment Stipulation", on file with this Court herein). (Toleno Dec. ¶11.)

21 As part of the Judgment Stipulation FINRA agreed to resolve Section 3A of the Award
 22 with Reed outside of the petition litigation, notwithstanding the language of the Award and
 23 FINRA rules requiring Reed to confirm the Award before receiving the requested relief. FINRA
 24 and Reed entered into the Judgment Stipulation in the interest of efficiency for all parties
 25 involved. Since FINRA agrees to resolve Section 3A of the Award without court confirmation,
 26 Reed excludes from this Motion the fees she incurred and continues to incur solely in connection
 27 with the resolution of Section 3A subsequent to the stipulation and entry of judgment. (Exh. D,
 28 Toleno Dec. ¶11.)

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2 **III. ARGUMENT**

3 Reed is entitled to an award of her attorneys' fees as set forth herein pursuant to the
4 Agreement voluntarily entered into by the parties, which provides that the prevailing party is
5 entitled to recover from the non-prevailing party all reasonable fees, costs, expenses of enforcing
6 any right of the prevailing party, including, without limitation, reasonable attorneys' fees and
7 expenses. (Exh. B.)

8 FINRA explicitly named Reed the "prevailing party" in the underlying arbitration.
9 FINRA also unequivocally stated in its Award that court confirmation of the Award was
10 mandatory in order for FINRA to execute the relief awarded to Reed. (Exh. A.). Accordingly, the
11 fees Reed incurred in the preparation, filing, litigation, and conclusion of her Petition, as well as
12 all her counsel's dealings with White Pacific's counsel (including opposing White Pacific's
13 Motion to Modify Award) after the issuance of the Award, were brought about by her attempts to
14 enforce her rights as the Prevailing Party.

15 Reed brings this Motion in good faith. The attorneys' fees, costs and expenses sought in
16 this Motion were incurred solely through Reed's compliance with FINRA requirements for
17 enforcing the Award. By working with FINRA to reach the Judgment Stipulation, Reed and her
18 counsel have saved the parties a great deal of time, money and resources, in that the resolution of
19 this action required no additional motion practice, hearings, or appearances by counsel. (Toleno
20 Dec., ¶13.)

21 Pursuant to the Agreement, Reed is entitled to full reimbursement of her attorneys' fees,
22 costs, and expenses of bringing this litigation.

23 **IV. CONCLUSION**

24 For all of the foregoing reasons, Reed respectfully requests that this Court grant her
25 Motion for Attorneys' fees, costs, and expenses of bringing this Petition in the amount of
26 \$42,140.54, as set forth herein and in the concurrently filed Proposed Order.

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1 DATED: December 5, 2007

Submitted by,

2 SHUSTAK & PARTNERS, P.C.
3 ERWIN J. SHUSTAK
4 THOMAS C. FROST
JONAH A. TOLENO
ROBERT L. HILL

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